

Senate Study Bill 3249

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to foreclosure consultants and foreclosure
2 reconveyances, providing for criminal and civil penalties, and
3 providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5682DP 82
6 rh/rj/24

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1 1 Section 1. NEW SECTION. 714E.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Business day" means any calendar day except Saturday,
1 5 Sunday, or a public holiday including a holiday observed on a
1 6 Monday.
1 7 2. "Contract" means an agreement, or a term in an
1 8 agreement, between a foreclosure consultant and an owner for
1 9 the rendition of a service.
1 10 3. a. "Foreclosure consultant" means a person who,
1 11 directly or indirectly, makes a solicitation, representation,
1 12 or offer to an owner to perform for compensation or who, for
1 13 compensation, performs a service which the person in any
1 14 manner represents will do any of the following:
1 15 (1) Stop or postpone a foreclosure, foreclosure sale,
1 16 forfeiture, sheriff's sale, or tax sale.
1 17 (2) Obtain a forbearance, modification, or repayment plan
1 18 from a beneficiary or mortgagee.
1 19 (3) Assist the owner to exercise the right of redemption,
1 20 cure the mortgage default, cure the real estate contract
1 21 default, or redeem the property from a tax sale.
1 22 (4) Obtain an extension of the period within which the
1 23 owner may reinstate the owner's obligation.
1 24 (5) Obtain a waiver of an acceleration clause contained in
1 25 a promissory note or contract secured by a mortgage on a
1 26 residence in foreclosure or contained in the mortgage.
1 27 (6) Assist the owner in foreclosure, foreclosure sale,
1 28 forfeiture, sheriff's sale, tax sale, or loan default to
1 29 obtain a loan or advance of funds.
1 30 (7) Avoid or ameliorate the impairment of the owner's
1 31 credit resulting from the recording of a notice of default or
1 32 the conduct of a foreclosure sale or a forfeiture of a real
1 33 estate contract.
1 34 (8) Save the owner's residence from foreclosure,
1 35 foreclosure sale, forfeiture, sheriff's sale, or tax sale.
2 1 (9) Negotiate or obtain a mortgage loan or real estate
2 2 contract modification, forbearance, repayment plan, or other
2 3 loss mitigation for the consumer.
2 4 b. "Foreclosure consultant" does not include any of the
2 5 following:
2 6 (1) A person licensed to practice law in this state when
2 7 the person renders service in the course of the person's
2 8 practice as an attorney at law.
2 9 (2) A person licensed to engage in the business of debt
2 10 management under chapter 533A, when the person is engaged in
2 11 the business of debt management.
2 12 (3) A person licensed as a real estate broker or
2 13 salesperson under chapter 543B, when the person engages in
2 14 acts whose performance requires licensure under that chapter
2 15 unless the person is engaged in offering services designed to,
2 16 or purportedly designed to, enable the owner to retain
2 17 possession of the residence in foreclosure.
2 18 (4) A person licensed as an accountant under chapter 542

2 19 when the person is acting in any capacity for which the person
2 20 is licensed under those provisions.

2 21 (5) A person or the person's authorized agent acting under
2 22 the express authority or written approval of the United States
2 23 department of housing and urban development or other
2 24 department or agency of the United States or this state to
2 25 provide services.

2 26 (6) A person who holds or is owed an obligation secured by
2 27 a lien on a residence in foreclosure when the person performs
2 28 services in connection with the obligation or lien if the
2 29 obligation or lien did not arise as the result of or as part
2 30 of a proposed foreclosure reconveyance.

2 31 (7) A person or entity doing business under any law of
2 32 this state, or of the United States, relating to banks, trust
2 33 companies, savings and loan associations, industrial loan and
2 34 thrift companies, regulated lenders, credit unions, insurance
2 35 companies, or a mortgagee approved by the United States
3 1 department of housing and urban development, and a subsidiary
3 2 or affiliate of these persons or entities, and an agent or
3 3 employee of these persons or entities while engaged in the
3 4 business of such persons or entities.

3 5 (8) A person licensed as a mortgage broker or mortgage
3 6 banker pursuant to chapter 535B, when acting under the
3 7 authority of that license.

3 8 (9) A person licensed as a mortgage broker or mortgage
3 9 banker or originator pursuant to chapter 535B, when acting
3 10 under the authority of that registration.

3 11 (10) A nonprofit agency or organization that offers
3 12 counseling or advice to an owner of a residence in foreclosure
3 13 or loan default if the nonprofit agency or organization does
3 14 not contract for services with for-profit lenders or
3 15 foreclosure purchasers.

3 16 (11) A judgment creditor of the owner, to the extent that
3 17 the judgment creditor's claim accrued prior to the personal
3 18 service of the foreclosure notice required by section 654.2D,
3 19 but excluding a person who purchased the claim after such
3 20 personal service.

3 21 (12) A foreclosure purchaser as defined in section 714F.1.

3 22 4. "Foreclosure reconveyance" means a transaction
3 23 involving all of the following:

3 24 a. The transfer of title to real property by an owner
3 25 during a foreclosure proceeding, forfeiture proceeding, or tax
3 26 sale, either by transfer of interest from the owner or by
3 27 creation of a mortgage or other lien or encumbrance during the
3 28 foreclosure, forfeiture, or tax sale process that allows the
3 29 acquirer to obtain title to the property by redeeming the
3 30 property as a junior lienholder.

3 31 b. The subsequent conveyance, or promise of a subsequent
3 32 conveyance, of an interest back to the owner by the acquirer
3 33 or a person acting in participation with the acquirer that
3 34 allows the owner to possess either the residence in
3 35 foreclosure or any other real property, which interest
4 1 includes but is not limited to an interest in a contract for
4 2 deed, purchase agreement, option to purchase, or lease.

4 3 5. "Owner" means the record owner or holder of an
4 4 equitable interest through contract of the residence in
4 5 foreclosure at the time the notice of pendency was recorded,
4 6 or at the time the default notice was served.

4 7 6. "Person" means the same as defined in section 4.1.

4 8 7. "Residence in foreclosure" or "affected residence"
4 9 means residential real property consisting of one to four
4 10 family dwelling units, one of which the owner occupies as the
4 11 owner's principal place of residence, where a delinquency or
4 12 default on any loan payment or debt is secured by or attached
4 13 to the residential real property including but not limited to
4 14 contract for deed payments, real estate contracts, or real
4 15 estate taxes.

4 16 8. "Service" includes but is not limited to any of the
4 17 following:

4 18 a. Debt, budget, or financial counseling of any type.

4 19 b. Receiving money for the purpose of distributing the
4 20 money to creditors in payment or partial payment of an
4 21 obligation secured by a lien on a residence in foreclosure.

4 22 c. Contacting creditors on behalf of an owner of a
4 23 residence in foreclosure.

4 24 d. Arranging or attempting to arrange for an extension of
4 25 the period within which the owner of a residence in
4 26 foreclosure, forfeiture, or tax sale may cure the owner's
4 27 default and reinstate the owner's obligation.

4 28 e. Arranging or attempting to arrange for a delay or
4 29 postponement of the time of sale of the residence in

4 30 foreclosure, forfeiture, or tax sale.
4 31 f. Advising the filing of a document or assisting in any
4 32 manner in the preparation of a document for filing with a
4 33 bankruptcy court.
4 34 g. Giving advice, explanation, or instruction to an owner
4 35 of a residence in foreclosure, forfeiture, or tax sale which
5 1 in any manner relates to the cure of a default in or the
5 2 reinstatement of an obligation secured by a lien on the
5 3 affected residence, the full satisfaction of that obligation,
5 4 or the postponement or avoidance of a sale or loss of the
5 5 affected residence, pursuant to a power of sale contained in a
5 6 mortgage.

5 7 Sec. 2. NEW SECTION. 714E.2 FORECLOSURE CONSULTANT
5 8 CONTRACT.

5 9 1. A foreclosure consultant contract must be in writing
5 10 and must fully disclose the exact nature of the foreclosure
5 11 consultant's services and the total amount and terms of
5 12 compensation.

5 13 2. The following notice, printed in at least fourteen
5 14 point boldface type and completed with the name of the
5 15 foreclosure consultant, must be printed immediately above the
5 16 notice of cancellation statement required pursuant to section
5 17 714E.3:

5 18 NOTICE REQUIRED BY IOWA LAW

5 19 (name) or anyone working for
5 20 him or her CANNOT:

5 21 (1) Take any money from you or ask you for money until
5 22 (name) has completely finished
5 23 doing everything he or she said he or she would do; and

5 24 (2) Ask you to sign or have you sign any lien, mortgage,
5 25 or real estate contract.

5 26 3. The contract must be written in the same language as
5 27 principally used by the foreclosure consultant to describe the
5 28 foreclosure consultant's services and to negotiate the
5 29 contract with the consumer. The contract must be dated and
5 30 signed by the owner, and must contain in immediate proximity
5 31 to the space reserved in the contract for the owner's
5 32 signature, a conspicuous statement in a size equal to at least
5 33 ten point boldface type, as follows:

5 34 You, the owner, may cancel this transaction at any time
5 35 prior to midnight of the third business day after the date
6 1 of this transaction. See the attached notice of cancellation
6 2 form for an explanation of this right.

6 3 4. The foreclosure consultant shall provide the owner
6 4 immediately upon execution of the contract with a copy of the
6 5 contract along with the notice of cancellation required in
6 6 section 714E.3.

6 7 5. The three business days during which the owner may
6 8 cancel the contract shall not begin to run until the
6 9 foreclosure consultant has complied with this section and with
6 10 section 714E.3.

6 11 Sec. 3. NEW SECTION. 714E.3 CANCELLATION OF FORECLOSURE
6 12 CONSULTANT CONTRACT.

6 13 1. In addition to any other right under law to rescind a
6 14 contract, an owner has the right to cancel such a contract
6 15 until midnight of the third business day after the day on
6 16 which the owner signs a contract which complies with section
6 17 714E.2.

6 18 2. Cancellation occurs when the owner gives written notice
6 19 of cancellation to the foreclosure consultant at the address
6 20 specified in the contract.

6 21 3. Notice of cancellation, if given by mail, is effective
6 22 when deposited in the mail properly addressed with postage
6 23 prepaid.

6 24 4. Notice of cancellation given by the owner need not take
6 25 the particular form as provided in the contract and, however
6 26 expressed, is effective if the notice of cancellation
6 27 indicates the intention of the owner not to be bound by the
6 28 contract.

6 29 5. The notice of cancellation must contain, and the
6 30 contract must contain on the first page, in a type size no
6 31 smaller than that generally used in the body of the document,
6 32 all of the following:

6 33 a. The real name and physical address of the foreclosure
6 34 consultant to which the notice of cancellation is to be mailed
6 35 or otherwise delivered. A post office box does not constitute
7 1 a physical address. A post office box may be designated for
7 2 delivery by mail only if it is accompanied by a physical
7 3 address at which the notice could be delivered by a method
7 4 other than mail. An electronic mail address may be included,
7 5 in addition to the physical address.

7 6 b. The date the owner signed the contract.
7 7 c. Cancellation occurs when the owner delivers, by any
7 8 means, written notice of cancellation to the address specified
7 9 in the contract. If cancellation is mailed, delivery is
7 10 effective upon mailing. If electronically mailed,
7 11 cancellation is effective upon transmission. The contract
7 12 must be accompanied by a completed form in duplicate,
7 13 captioned "notice of cancellation", which must be attached to
7 14 the contract, must be easily detachable, and must contain in
7 15 at least ten point type the following statement written in the
7 16 same language as used in the contract:

7 17 NOTICE OF CANCELLATION

7 18
7 19 (enter date of transaction)

7 20 You may cancel this transaction, without any penalty
7 21 or obligation, within three business days from the above
7 22 date.

7 23 To cancel this transaction, you may use any of the
7 24 following methods: (1) mail or otherwise deliver a signed
7 25 and dated copy of this cancellation notice, or any other
7 26 written notice of cancellation; or (2) e-mail a notice of
7 27 cancellation to at

7 28 (name of foreclosure consultant)
7 29
7 30 (physical address of foreclosure consultant's place
7 31 of business)

7 32
7 33 (e-mail address of foreclosure consultant's place of
7 34 business)

7 35 Not later than midnight of (date).

8 1 I hereby cancel this transaction.

8 2
8 3 (date)

8 4
8 5 (owner's signature)

8 6 6. The three business days during which the owner may
8 7 cancel the contract shall not begin to run until the
8 8 foreclosure consultant has complied with the requirements of
8 9 this section and with section 714E.2.

8 10 Sec. 4. NEW SECTION. 714E.4 VIOLATIONS.

8 11 It is a violation for a foreclosure consultant to do any of
8 12 the following:

8 13 1. Claim, demand, charge, collect, or receive compensation
8 14 until after the foreclosure consultant has fully performed
8 15 each and every service the foreclosure consultant contracted
8 16 to perform or represented the foreclosure consultant would
8 17 perform.

8 18 2. Claim, demand, charge, collect, or receive a fee,
8 19 interest, or other compensation for any reason which exceeds
8 20 eight percent per annum of the amount of any loan which the
8 21 foreclosure consultant may make to the owner. Such a loan
8 22 must not, as provided in subsection 3, be secured by the
8 23 residence in foreclosure or any other real or personal
8 24 property.

8 25 3. Take a wage assignment, a lien of any type on real or
8 26 personal property, or other security to secure the payment of
8 27 compensation. Any such security is void and unenforceable.

8 28 4. Receive consideration from any third party in
8 29 connection with services rendered to an owner unless the
8 30 consideration is first fully disclosed to the owner.

8 31 5. Acquire an interest, directly or indirectly, or by
8 32 means of a subsidiary or affiliate in a residence in
8 33 foreclosure from an owner with whom the foreclosure consultant
8 34 has contracted.

8 35 6. Take a power of attorney from an owner for any purpose,
9 1 except to inspect documents as provided by law.

9 2 7. Induce or attempt to induce an owner to enter into a
9 3 contract which does not comply in all respects with the
9 4 requirements of this chapter.

9 5 8. Claim, demand, charge, collect, or receive a fee,
9 6 interest, or other compensation for promising to negotiate a
9 7 mortgage loan or real estate contract modification,
9 8 forbearance, repayment plan, or other loss mitigation for the
9 9 consumer and failing to successfully negotiate such a
9 10 modification, forbearance, repayment plan, or other loss
9 11 mitigation.

9 12 9. Prohibit the borrower from contacting any lender,
9 13 servicer, government entity, attorney, counselor, individual,
9 14 or company that may seek to help the consumer. Any such
9 15 provision is void and unenforceable.

9 16 Sec. 5. NEW SECTION. 714E.5 WAIVER NOT ALLOWED.

9 17 A waiver by an owner of the provisions of this chapter is
9 18 void and unenforceable as contrary to public policy. An
9 19 attempt by a foreclosure consultant to induce an owner to
9 20 waive the owner's rights is a violation of this chapter.

9 21 Sec. 6. NEW SECTION. 714E.6 REMEDIES.

9 22 1. A violation of this chapter is an unlawful practice
9 23 pursuant to section 714.16, and all remedies of section 714.16
9 24 are available for such an action. A private cause of action
9 25 brought under this chapter by an owner is in the public
9 26 interest. An owner may bring an action against a foreclosure
9 27 consultant for a violation of this chapter. If the court
9 28 finds that the foreclosure consultant violated this chapter,
9 29 the court shall award the owner actual damages, appropriate
9 30 equitable relief, and the costs of the action, and shall award
9 31 reasonable fees to the owner's attorney.

9 32 2. The rights and remedies provided in subsection 1 are
9 33 cumulative to, and not a limitation of, any other rights and
9 34 remedies provided by law. Any action brought by a person
9 35 other than the attorney general pursuant to this section must
10 1 be commenced within four years from the date of the alleged
10 2 violation.

10 3 3. The court may award exemplary damages up to one and
10 4 one-half times the compensation, fees, and interest charged by
10 5 the foreclosure consultant if the court finds that the
10 6 foreclosure consultant violated the provisions of section
10 7 714E.4, subsection 1, 2, or 4, and the foreclosure consultant
10 8 acted in bad faith.

10 9 4. Notwithstanding any other provision of this section, an
10 10 action shall not be brought on the basis of a violation of
10 11 this chapter, except by an owner against whom the violation
10 12 was committed or by the attorney general. This limitation
10 13 does not apply to administrative action by either the attorney
10 14 general or the superintendent of the banking division of the
10 15 department of commerce.

10 16 Sec. 7. NEW SECTION. 714E.7 CRIMINAL PENALTY.

10 17 A person who commits any violation described in section
10 18 714E.4 commits a serious misdemeanor. Prosecution or
10 19 conviction for a violation described in section 714E.4 shall
10 20 not bar prosecution or conviction for any other offenses.
10 21 These penalties are cumulative to any other remedies or
10 22 penalties provided.

10 23 Sec. 8. NEW SECTION. 714E.8 PROVISIONS SEVERABLE.

10 24 If any provision of sections 714E.2 through 714E.7 and
10 25 714E.9 or the application of any of these provisions to any
10 26 person or circumstance is held to be unconstitutional and
10 27 void, the remainder of sections 714E.2 through 714E.7 and
10 28 714E.9 remains valid.

10 29 Sec. 9. NEW SECTION. 714E.9 ARBITRATION PROHIBITED.

10 30 A provision in a contract which attempts or purports to
10 31 require arbitration of a dispute arising under sections 714E.2
10 32 through 714E.5 is void at the option of the owner.

10 33 Sec. 10. NEW SECTION. 714F.1 DEFINITIONS.

10 34 As used in this chapter, unless the context otherwise
10 35 requires:

11 1 1. "Business day" means any calendar day except Saturday,
11 2 Sunday, or a public holiday including a holiday observed on a
11 3 Monday.

11 4 2. "Foreclosed homeowner" means an owner of residential
11 5 real property, including a condominium, that is the primary
11 6 residence of the owner and whose mortgage on the real property
11 7 is or was in foreclosure, forfeiture, or tax sale.

11 8 3. a. "Foreclosure purchaser" means a person that has
11 9 acted as the acquirer in a foreclosure reconveyance.
11 10 "Foreclosure purchaser" includes a person that has acted in
11 11 joint venture or joint enterprise with one or more acquirers
11 12 in a foreclosure reconveyance.

11 13 b. "Foreclosure purchaser" does not include any of the
11 14 following:

11 15 (1) A natural person who shows that the natural person is
11 16 not in the business of foreclosure purchasing and has a prior
11 17 personal relationship with the foreclosed homeowner.

11 18 (2) A person or entity doing business under any law of
11 19 this state, or of the United States, relating to banks, trust
11 20 companies, savings and loan associations, industrial loan and
11 21 thrift companies, regulated lenders, credit unions, insurance
11 22 companies, or a mortgagee approved by the United States
11 23 department of housing and urban development, and any
11 24 subsidiary or affiliate of such persons or entities, and any
11 25 agent or employee of such persons or entities while engaged in
11 26 the business of such persons or entities.

11 27 4. "Foreclosure reconveyance" means a transaction

11 28 involving both of the following:
11 29 a. The transfer of title to real property by a foreclosed
11 30 homeowner during a foreclosure proceeding, forfeiture
11 31 proceeding, or tax sale proceeding, either by transfer of
11 32 interest from the foreclosed homeowner or by creation of a
11 33 mortgage or other lien or encumbrance during the process that
11 34 allows the acquirer to obtain title to the property by
11 35 redeeming the property as a junior lienholder.

12 1 b. The subsequent conveyance, or promise of a subsequent
12 2 conveyance, of an interest back to the affected homeowner by
12 3 the acquirer or a person acting in participation with the
12 4 acquirer that allows the foreclosed homeowner to possess
12 5 either the affected residence or other real property, which
12 6 interest includes but is not limited to an interest in a
12 7 contract for deed, purchase agreement, option to purchase, or
12 8 lease.

12 9 5. "Resale" means a bona fide market sale of the property
12 10 subject to the foreclosure reconveyance by the foreclosure
12 11 purchaser to an unaffiliated third party.

12 12 6. "Resale price" means the gross sale price of the
12 13 property on resale.

12 14 7. "Residence in foreclosure" or "affected residence"
12 15 means residential real property consisting of one to four
12 16 family dwelling units, one of which the foreclosed homeowner
12 17 occupies as the foreclosed homeowner's principal place of
12 18 residence, where a delinquency or default on any loan payment
12 19 or debt is secured by or attached to the residential real
12 20 property, including but not limited to contract for deed
12 21 payments, real estate contracts, or real estate taxes.

12 22 Sec. 11. NEW SECTION. 714F.2 CONTRACT REQUIREMENT ==
12 23 FORM AND LANGUAGE.

12 24 A foreclosure purchaser shall enter into a foreclosure
12 25 reconveyance in the form of a written contract. The contract
12 26 must be written in letters of a size equal to at least twelve
12 27 point boldface type, in the same language principally used by
12 28 the foreclosure purchaser and foreclosed homeowner to
12 29 negotiate the sale of the residence in foreclosure, and must
12 30 be fully completed and signed and dated by the foreclosed
12 31 homeowner and foreclosure purchaser before the execution of
12 32 any instrument of conveyance of the residence in foreclosure.

12 33 Sec. 12. NEW SECTION. 714F.3 CONTRACT TERMS.

12 34 1. A contract required by section 714F.2 must contain the
12 35 entire agreement of the parties and shall include all the
13 1 following terms:

13 2 a. The real name, business address, and the telephone
13 3 number of the foreclosure purchaser.

13 4 b. The address of the residence in foreclosure.

13 5 c. The total consideration to be given by the foreclosure
13 6 purchaser in connection with or incident to the sale.

13 7 d. A complete description of the terms of payment or
13 8 other consideration including but not limited to any services
13 9 of any nature that the foreclosure purchaser represents the
13 10 foreclosure purchaser will perform for the foreclosed
13 11 homeowner before or after the sale.

13 12 e. The time at which possession is to be transferred to
13 13 the foreclosure purchaser.

13 14 f. A complete description of the terms of any related
13 15 agreement designed to allow the foreclosed homeowner to remain
13 16 in the home including but not limited to a rental agreement,
13 17 repurchase agreement, contract for deed, or lease with option
13 18 to buy.

13 19 g. A notice of cancellation as provided in section 714E.5.

13 20 h. The following notice in at least fourteen point
13 21 boldface type, if the contract is printed or in capital
13 22 letters if the contract is typed, and completed with the name
13 23 of the foreclosure purchaser, immediately above the statement
13 24 required by section 714F.5:

13 25 NOTICE REQUIRED BY IOWA LAW

13 26 Until your right to cancel this contract has ended,
13 27 (name) or anyone
13 28 working for (name) CANNOT ask you to
13 29 sign or have you sign any deed or any other document.

13 30 2. The contract required by this section survives delivery
13 31 of any instrument of conveyance of the residence in
13 32 foreclosure, and has no effect on persons other than the
13 33 parties to the contract.

13 34 Sec. 13. NEW SECTION. 714F.4 CONTRACT CANCELLATION.

13 35 1. In addition to any other right of rescission, the
14 1 foreclosed homeowner has the right to cancel any contract with
14 2 a foreclosure purchaser until midnight of the third business
14 3 day following the day on which the foreclosed homeowner signs

14 4 a contract that complies with this chapter or until 8:00 a.m.
14 5 on the last day of the period during which the foreclosed
14 6 homeowner has a right of redemption, whichever occurs first.
14 7 2. Cancellation occurs when the foreclosed homeowner
14 8 delivers, by any means, written notice of cancellation,
14 9 provided that, at a minimum, the contract and the notice of
14 10 cancellation contains a physical address to which notice of
14 11 cancellation may be mailed or otherwise delivered. A post
14 12 office box does not constitute a physical address. A post
14 13 office box may be designated for delivery by mail only if it
14 14 is accompanied by a physical address at which the notice could
14 15 be delivered by a method other than mail. An electronically
14 16 mailed address may be provided in addition to the physical
14 17 address. If cancellation is mailed, delivery is effective
14 18 upon mailing. If electronically mailed, cancellation is
14 19 effective upon transmission.

14 20 3. A notice of cancellation given by the foreclosed
14 21 homeowner need not take the particular form as provided with
14 22 the contract.

14 23 4. Within ten days following receipt of a notice of
14 24 cancellation given in accordance with this section, the
14 25 foreclosure purchaser shall return without condition any
14 26 original contract and any other documents signed by the
14 27 foreclosed homeowner.

14 28 Sec. 14. NEW SECTION. 714F.5 NOTICE OF CANCELLATION.

14 29 1. The contract must contain in immediate proximity to the
14 30 space reserved for the foreclosed homeowner's signature a
14 31 conspicuous statement in a size equal to at least fourteen
14 32 point boldface type, if the contract is printed, or in capital
14 33 letters, if the contract is typed, as follows:

14 34 You may cancel this contract for the sale of your
14 35 house without any penalty or obligation at any time before
15 1 (date and time of day)

15 2 See the attached notice of cancellation form for an
15 3 explanation of this right.

15 4 The foreclosure purchaser shall accurately enter the
15 5 date and time of day on which the cancellation right ends.

15 6 2. The contract must be accompanied by a completed form in
15 7 duplicate, captioned "notice of cancellation" in a size equal
15 8 to a twelve point boldface type if the contract is printed, or
15 9 in capital letters, if the contract is typed, followed by a
15 10 space in which the foreclosure purchaser shall enter the date
15 11 on which the foreclosed homeowner executes the contract. This
15 12 form must be attached to the contract, must be easily
15 13 detachable, and must contain in type of at least ten points,
15 14 if the contract is printed, or in capital letters, if the
15 15 contract is typed, the following statement written in the same
15 16 language as used in the contract:

15 17 NOTICE OF CANCELLATION

15 18

15 19 (enter date contract signed)

15 20 You may cancel this contract for the sale of your house,
15 21 without any penalty or obligation, at any time before

15 22

15 23 (enter date and time of day)

15 24 To cancel this transaction, you may use any of the
15 25 following methods: (1) mail or otherwise deliver a signed
15 26 and dated copy of this cancellation notice; or (2) e-mail
15 27 a notice of cancellation to at

15 28 (name of purchaser)

15 29

15 30 (physical address of purchaser's place of business)

15 31

15 32 (e-mail address of foreclosure consultant's place of
15 33 business)

15 34 Not later than (enter date and time of day)

15 35 I hereby cancel this transaction.

16 1

16 2 (date)

16 3

16 4 (seller's signature)

16 5 3. The foreclosure purchaser shall provide the foreclosed
16 6 homeowner with a copy of the contract and the attached notice
16 7 of cancellation at the time the contract is executed by all
16 8 parties.

16 9 4. The three business days during which the foreclosed
16 10 homeowner may cancel the contract shall not begin to run until
16 11 all parties to the contract have executed the contract and the
16 12 foreclosure purchaser has complied with this section.

16 13 Sec. 15. NEW SECTION. 714F.6 WAIVER.

16 14 A waiver of the provisions of this chapter is void and

16 15 unenforceable as contrary to public policy except a consumer
16 16 may waive the three-day right to cancel provided in section
16 17 714F.4 if the property is subject to a foreclosure sale, tax
16 18 sale, or contract forfeiture within the three business days
16 19 and the shortened cancellation period was not caused by the
16 20 foreclosure purchaser or an agent of the foreclosure
16 21 purchaser, and the foreclosed homeowner agrees to waive the
16 22 foreclosed homeowner's right to cancel in a handwritten
16 23 statement signed by all parties holding title to the
16 24 foreclosed property.

16 25 Sec. 16. NEW SECTION. 714F.7 ARBITRATION PROHIBITED.

16 26 A provision in a contract which attempts or purports to
16 27 require arbitration of any dispute arising under this chapter
16 28 is void at the option of the foreclosed homeowner.

16 29 Sec. 17. NEW SECTION. 714F.8 PROHIBITED PRACTICES.

16 30 A foreclosure purchaser shall not do any of the following:

16 31 1. Enter into, or attempt to enter into, a foreclosure
16 32 reconveyance with a foreclosed homeowner unless all of the
16 33 following apply:

16 34 a. The foreclosure purchaser verifies and can demonstrate
16 35 that the foreclosed homeowner has a reasonable ability to pay
17 1 for the subsequent conveyance of an interest back to the
17 2 foreclosed homeowner. In the case of a lease with an option
17 3 to purchase, payment ability also includes the reasonable
17 4 ability to make the lease payments and purchase the property
17 5 within the term of the option to purchase. A rebuttable
17 6 presumption arises that a foreclosed homeowner is reasonably
17 7 able to pay for the subsequent conveyance if the foreclosed
17 8 homeowner's payments for primary housing expenses and regular
17 9 principal and interest payments on other personal debt, on a
17 10 monthly basis, do not exceed sixty percent of the foreclosed
17 11 homeowner's monthly gross income. For the purposes of this
17 12 section, "primary housing expenses" means the sum of payments
17 13 for regular principal, interest, rent, utilities, hazard
17 14 insurance, real estate taxes, and association dues. A
17 15 rebuttable presumption arises that the foreclosure purchaser
17 16 has not verified reasonable payment ability if the foreclosure
17 17 purchaser has not obtained documents other than a statement by
17 18 the foreclosed homeowner of assets, liabilities, and income.

17 19 b. The foreclosure purchaser and the foreclosed homeowner
17 20 complete a closing for any foreclosure reconveyance in which
17 21 the foreclosure purchaser obtains a deed or mortgage from a
17 22 foreclosed homeowner. For purposes of this section, "closing"
17 23 means an in-person meeting to complete final documents
17 24 incident to the sale of the real property or the creation of a
17 25 mortgage on the real property conducted by a closing agent,
17 26 who is not employed by or an affiliate of the foreclosure
17 27 purchaser, or employed by such an affiliate, and who does not
17 28 have a business or personal relationship with the foreclosure
17 29 purchaser other than the provision of real estate settlement
17 30 services.

17 31 c. The foreclosure purchaser obtains the written consent
17 32 of the foreclosed homeowner to a grant by the foreclosure
17 33 purchaser of any interest in the property during such times as
17 34 the foreclosed homeowner maintains any interest in the
17 35 property.

18 1 d. The foreclosure purchaser complies with the
18 2 requirements for disclosure, loan terms, and conduct in the
18 3 federal Home Ownership Equity Protection Act, 15 U.S.C. }
18 4 1639, for any foreclosure reconveyance in which the foreclosed
18 5 homeowner obtains a vendee interest in a contract for deed,
18 6 regardless of whether the terms of the contract for deed meet
18 7 the annual percentage rate or points and fees requirements for
18 8 a covered loan in 12 C.F.R. section 226.32 (a) and (b).

18 9 2. Enter into a foreclosure reconveyance unless the
18 10 foreclosure purchaser notifies all existing mortgage lien
18 11 holders of the foreclosure purchaser's intent to accept
18 12 conveyance of any interest in the property from the foreclosed
18 13 homeowner, and fully complies with all terms and conditions
18 14 contained in the mortgage lien documents including but not
18 15 limited to due-on-sale provisions or meeting all qualification
18 16 requirements for assuming the repayment of the mortgage.

18 17 3. Fail to do any of the following:

18 18 a. Ensure that title to the subject dwelling has been
18 19 reconveyed to the foreclosed homeowner.

18 20 b. (1) Make a payment to the foreclosed homeowner such
18 21 that the foreclosed homeowner has received consideration in an
18 22 amount of at least eighty-two percent of the fair market value
18 23 of the property, as the property was when the foreclosed
18 24 homeowner vacated the property, within ninety days of either
18 25 the eviction or voluntary relinquishment of possession of the

18 26 property by the foreclosed homeowner. The foreclosure
18 27 purchaser shall make a detailed accounting of the basis for
18 28 the payment amount, or a detailed accounting of the reasons
18 29 for failure to make a payment, including providing written
18 30 documentation of expenses, within this ninety-day period. The
18 31 accounting shall be on a form prescribed by the attorney
18 32 general, in consultation with the superintendent of the
18 33 banking division of the department of commerce without being
18 34 subject to the rulemaking procedures of chapter 17A.

18 35 (2) For purposes of this paragraph "b", all of the
19 1 following shall apply:

19 2 (a) A rebuttable presumption arises that an appraisal by a
19 3 person licensed or certified by an agency of the federal
19 4 government or this state to appraise real estate constitutes
19 5 the fair market value of the property.

19 6 (b) The time for determining the fair market value amount
19 7 shall be determined in the foreclosure reconveyance contract
19 8 as either at the time of the execution of the foreclosure
19 9 reconveyance contract or at resale. If the contract states
19 10 that the fair market value shall be determined at the time of
19 11 resale, the fair market value shall be the resale price if it
19 12 is sold within sixty days of the eviction or voluntary
19 13 relinquishment of the property by the foreclosed homeowner.
19 14 If the contract states that the fair market value shall be
19 15 determined at the time of resale, and the resale is not
19 16 completed within sixty days of the eviction or voluntary
19 17 relinquishment of the property by the foreclosed homeowner,
19 18 the fair market value shall be determined by an appraisal
19 19 conducted within one hundred eighty days of the eviction or
19 20 voluntary relinquishment of the property by the foreclosed
19 21 homeowner and payment, if required, shall be made to the
19 22 foreclosed homeowner, but the fair market value shall be
19 23 recalculated as the resale price on resale and an additional
19 24 payment amount, if appropriate, based on the resale price,
19 25 shall be made to the foreclosed homeowner within fifteen days
19 26 of resale, and a detailed accounting of the basis for the
19 27 payment amount, or a detailed accounting of the reasons for
19 28 failure to make additional payment, shall be made within
19 29 fifteen days of resale, including providing written
19 30 documentation of expenses. The accounting shall be on a form
19 31 prescribed by the attorney general, in consultation with the
19 32 superintendent of the banking division of the department of
19 33 commerce, without being subject to the rulemaking procedures
19 34 of chapter 17A.

19 35 (c) "Consideration" means any payment or thing of value
20 1 provided to the foreclosed homeowner, including unpaid rent or
20 2 contract for deed payments owed by the foreclosed homeowner
20 3 prior to the date of eviction or voluntary relinquishment of
20 4 the property, reasonable costs paid to third parties necessary
20 5 to complete the foreclosure reconveyance transaction, payment
20 6 of money to satisfy a debt or legal obligation of the
20 7 foreclosed homeowner that creates a lien against the affected
20 8 residence, or the reasonable cost of repairs for damage to the
20 9 dwelling caused by the foreclosed homeowner; or a penalty
20 10 imposed by a court for the filing of a frivolous claim under
20 11 section 714F.9, subsection 6, but "consideration" shall not
20 12 include amounts imputed as a down payment or fee to the
20 13 foreclosure purchaser, or a person acting in participation
20 14 with the foreclosure purchaser, incident to a contract for
20 15 deed, lease, or option to purchase entered into as part of the
20 16 foreclosure reconveyance, except for reasonable costs paid to
20 17 third parties necessary to complete the foreclosure
20 18 reconveyance.

20 19 3. Enter into repurchase or lease terms as part of the
20 20 subsequent conveyance that are unfair or commercially
20 21 unreasonable, or engage in any other unfair conduct.

20 22 4. Represent, directly or indirectly, any of the
20 23 following:

20 24 a. The foreclosure purchaser is acting as an advisor or a
20 25 consultant, or in any other manner represents that the
20 26 foreclosure purchaser is acting on behalf of the foreclosed
20 27 homeowner.

20 28 b. The foreclosure purchaser has a qualification,
20 29 certification, or licensure that the foreclosure purchaser
20 30 does not have, or that the foreclosure purchaser is not a
20 31 member of a licensed profession if that is untrue.

20 32 c. The foreclosure purchaser is assisting the foreclosed
20 33 homeowner to "save the house" or a substantially similar
20 34 phrase.

20 35 d. The foreclosure purchaser is assisting the foreclosed
21 1 homeowner in preventing a completed foreclosure, forfeiture,

21 2 or tax sale if the result of the transaction is that the
21 3 foreclosed homeowner will not complete a redemption of the
21 4 property.

21 5 5. Make any other statements, directly or by implication,
21 6 or engage in any other conduct that is false, deceptive, or
21 7 misleading, or that has the likelihood to cause confusion or
21 8 misunderstanding, including but not limited to statements
21 9 regarding the value of the residence in foreclosure, the
21 10 amount of proceeds the foreclosed homeowner will receive after
21 11 a foreclosure sale, any contract term, or the foreclosed
21 12 homeowner's rights or obligations incident to or arising out
21 13 of the foreclosure reconveyance.

21 14 6. Do any of the following until the time during which the
21 15 foreclosed homeowner may cancel the transaction has fully
21 16 elapsed:

21 17 a. Accept from a foreclosed homeowner an execution of, or
21 18 induce a foreclosed homeowner to execute, an instrument of
21 19 conveyance of any interest in the residence in foreclosure.

21 20 b. Record with the county recorder or file with the
21 21 registrar of titles any document including but not limited to
21 22 an instrument of conveyance, signed by the foreclosed
21 23 homeowner.

21 24 c. Transfer or encumber or purport to transfer or encumber
21 25 any interest in the residence in foreclosure to any third
21 26 party.

21 27 Sec. 18. NEW SECTION. 714F.9 ENFORCEMENT.

21 28 1. REMEDIES. A violation of this chapter is an unlawful
21 29 practice pursuant to section 714.16, and all the remedies of
21 30 section 714.16 are available for such an action. A private
21 31 cause of action brought under this chapter by a foreclosed
21 32 homeowner is in the public interest. A foreclosed homeowner
21 33 may bring an action for a violation of this chapter. If the
21 34 court finds a violation of this chapter, the court shall award
21 35 to the foreclosed homeowner actual damages, appropriate
22 1 equitable relief, and the costs of the action, and shall award
22 2 reasonable fees to the foreclosed homeowner's attorney.
22 3 Notwithstanding any other provision of this section, an action
22 4 shall not be brought on the basis of a violation of this
22 5 chapter except by a foreclosed homeowner against whom the
22 6 violation was committed or by the attorney general. This
22 7 limitation does not apply to administrative action by the
22 8 superintendent of the banking division of the department of
22 9 commerce.

22 10 2. EXEMPLARY DAMAGES. In a private right of action for a
22 11 violation of this chapter, the court may award exemplary
22 12 damages of any amount. If the court determines that an award
22 13 of exemplary damages is appropriate, the amount of exemplary
22 14 damages awarded shall not be less than one and one-half times
22 15 the foreclosed homeowner's actual damages. Any claim for
22 16 exemplary damages brought pursuant to this section must be
22 17 commenced within four years after the date of the alleged
22 18 violation.

22 19 3. REMEDIES CUMULATIVE. The remedies provided in this
22 20 section are cumulative and do not restrict any remedy that is
22 21 otherwise available. The provisions of this chapter are not
22 22 exclusive and are in addition to any other requirements,
22 23 rights, remedies, and penalties provided by law. No action
22 24 under this section shall affect the rights in the foreclosed
22 25 property held by a good faith purchaser for value.

22 26 4. CRIMINAL PENALTY. A foreclosure purchaser who engages
22 27 in a practice which would operate as a fraud or deceit upon a
22 28 foreclosed homeowner is guilty of a serious misdemeanor.
22 29 Prosecution or conviction for any one of the violations does
22 30 not bar prosecution or conviction for any other offenses.

22 31 5. FAILURE OF TRANSACTION. Failure of the parties to
22 32 complete the reconveyance transaction, in the absence of
22 33 additional misconduct, shall not subject a foreclosure
22 34 purchaser to the criminal penalties under this chapter.

22 35 6. STAY OF EVICTION ACTION.

23 1 a. A court hearing an eviction action against a foreclosed
23 2 homeowner must issue an automatic stay, without imposition of
23 3 a bond, if the foreclosed homeowner makes a prima facie
23 4 showing that all of the following apply:

23 5 (1) The foreclosed homeowner has done any of the
23 6 following:

23 7 (a) Commenced an action concerning a foreclosure
23 8 reconveyance.

23 9 (b) Asserts a defense that the property that is the
23 10 subject of the eviction action is also the subject of a
23 11 foreclosure reconveyance in violation of this chapter.

23 12 (c) Asserts a claim or affirmative defense of fraud, false

23 13 pretense, false promise, misrepresentation, misleading
23 14 statement, or deceptive practice, in connection with a
23 15 foreclosure reconveyance.
23 16 (2) The foreclosed homeowner owned the residence in
23 17 foreclosure.
23 18 (3) The foreclosed homeowner conveyed title to the
23 19 residence in foreclosure to a third party upon a promise that
23 20 the foreclosed homeowner would be allowed to occupy the
23 21 residence in foreclosure or other real property in which the
23 22 foreclosure purchaser or a person acting in participation with
23 23 the foreclosure purchaser has an interest and that the
23 24 residence in foreclosure or other real property would be the
23 25 subject of a foreclosure reconveyance.
23 26 (4) Since the conveyance, the foreclosed homeowner has
23 27 continuously occupied the residence in foreclosure or other
23 28 real property in which the foreclosure purchaser or a person
23 29 acting in participation with the foreclosure purchaser has an
23 30 interest.

23 31 b. For purposes of this subsection, notarized affidavits
23 32 are acceptable means of proof to meet the foreclosed
23 33 homeowner's burden. Upon good cause shown, a foreclosed
23 34 homeowner may request and the court may grant up to an
23 35 additional two weeks to produce evidence required to make the
24 1 prima facie showing.

24 2 c. A court may award to a plaintiff a penalty of up to
24 3 five hundred dollars upon a showing that the foreclosed
24 4 homeowner filed a frivolous claim or asserted a frivolous
24 5 defense.

24 6 d. The automatic stay expires upon the later of any of the
24 7 following:

24 8 (1) The failure of the foreclosed homeowner to commence an
24 9 action in a court of competent jurisdiction in connection with
24 10 a foreclosed reconveyance transaction within ninety days after
24 11 the issuance of the stay.

24 12 (2) The issuance of an order lifting the stay by a court
24 13 hearing claims related to the foreclosure reconveyance.

24 14 Sec. 19. EFFECTIVE DATE. This Act, being deemed of
24 15 immediate importance, takes effect upon enactment.

24 16 EXPLANATION

24 17 This bill provides for the regulation of mortgage
24 18 foreclosure consultant contracts and mortgage foreclosure
24 19 reconveyance transactions.

24 20 FORECLOSURE CONSULTANT CONTRACTS. The bill provides
24 21 certain requirements relating to the form and language of a
24 22 foreclosure consultant contract between a foreclosure
24 23 consultant and an owner including the notice of the owner's
24 24 right to cancel the contract up to three business days after
24 25 the owner signs the contract. The bill defines a "foreclosure
24 26 consultant" as a person who, directly or indirectly, makes a
24 27 solicitation, representation, or offer to an owner to perform
24 28 certain services for compensation to help an owner avoid a
24 29 foreclosure, foreclosure sale, forfeiture, sheriff's sale, or
24 30 tax sale on the homeowner's property and an "owner" as the
24 31 record owner of the residential real property in foreclosure
24 32 at the time the notice of pendency was recorded, or at the
24 33 time the default notice was served. The bill exempts certain
24 34 persons with a legitimate interest in foreclosure sales from
24 35 the bill's provisions.

25 1 The bill prohibits a foreclosure consultant from engaging
25 2 in the following prohibited practices:

25 3 1. Claim, demand, charge, collect, or receive compensation
25 4 until after the foreclosure consultant has fully performed
25 5 each and every service the foreclosure consultant contracted
25 6 to perform or represented the foreclosure consultant would
25 7 perform.

25 8 2. Claim, demand, charge, collect, or receive a fee,
25 9 interest, or other compensation for any reason which exceeds 8
25 10 percent per annum of the amount of any loan which the
25 11 foreclosure consultant may make to the owner.

25 12 3. Take a wage assignment, a lien of any type on real or
25 13 personal property, or other security to secure the payment of
25 14 compensation.

25 15 4. Receive consideration from any third party in
25 16 connection with services rendered to an owner unless the
25 17 consideration is first fully disclosed to the owner.

25 18 5. Acquire an interest, directly or indirectly, or by
25 19 means of a subsidiary or affiliate in a residence in
25 20 foreclosure from an owner with whom the foreclosure consultant
25 21 has contracted.

25 22 6. Take a power of attorney from an owner for any purpose,
25 23 except to inspect documents as provided by law.

25 24 7. Induce or attempt to induce an owner to enter into a
25 25 contract which does not comply in all respects with the
25 26 requirements of the bill.

25 27 8. Claim, demand, charge, collect, or receive a fee,
25 28 interest, or other compensation for promising to negotiate a
25 29 mortgage loan or real estate contract modification,
25 30 forbearance, repayment plan, or other loss mitigation for the
25 31 consumer and failing to successfully negotiate such a
25 32 modification, forbearance, repayment plan, or other loss
25 33 mitigation.

25 34 9. Prohibit the borrower from contacting any lender,
25 35 servicer, government entity, or any other person helping the
26 1 consumer.

26 2 The bill prohibits waiver of the provisions of the bill and
26 3 makes such waiver provisions void.

26 4 The bill provides that all remedies under Iowa's consumer
26 5 fraud Act, Code section 714.16, are available for an aggrieved
26 6 homeowner through an action filed by the attorney general and
26 7 additionally provides that a homeowner also has a private
26 8 cause of action for violations of the bill which must be
26 9 commenced within four years from the date of the alleged
26 10 violation. If the court finds that the foreclosure consultant
26 11 violated the bill, the court shall award the owner actual
26 12 damages, appropriate equitable relief, and the costs of the
26 13 action, and shall award reasonable attorney fees to the
26 14 owner's attorney.

26 15 The bill provides that any person in violation of the
26 16 bill's proscriptions commits a serious misdemeanor. A serious
26 17 misdemeanor is punishable by confinement for no more than one
26 18 year and a fine of at least \$315 but not more than \$1,875.

26 19 The bill also provides that any provision of a foreclosure
26 20 consultant contract that attempts or purports to require
26 21 arbitration of a dispute that arises under the bill is void at
26 22 the option of the homeowner.

26 23 FORECLOSURE RECONVEYANCES. The bill provides certain
26 24 requirements relating to the form and language of a
26 25 foreclosure reconveyance contract between a foreclosure
26 26 purchaser and a foreclosed homeowner, including the notice of
26 27 the homeowner's right to cancel the contract up to three
26 28 business days after the foreclosed homeowner signs the
26 29 contract or until 8:00 a.m. on the last day of the period
26 30 during which the foreclosed homeowner has a right of
26 31 redemption, whichever occurs first. "Foreclosure
26 32 reconveyance" is defined as a transaction involving the
26 33 transfer of title to real property by a foreclosed homeowner
26 34 during a foreclosure proceeding and the subsequent conveyance
26 35 back to the foreclosed homeowner following the completion of
27 1 foreclosure proceedings; "foreclosure purchaser" is defined as
27 2 a person that has acted as the acquirer in a foreclosure
27 3 reconveyance and includes a person that has acted in joint
27 4 venture or joint enterprise with one or more acquirers in a
27 5 foreclosure reconveyance; and "foreclosed homeowner" means an
27 6 owner of residential real property, including a condominium,
27 7 that is the primary residence of the owner and whose mortgage
27 8 on the real property is or was in foreclosure, forfeiture, or
27 9 tax sale.

27 10 The bill prohibits a foreclosure consultant from entering
27 11 into, or attempting to enter into, a foreclosure reconveyance
27 12 with a foreclosed homeowner unless the following requirements
27 13 are met:

27 14 1. The foreclosure purchaser verifies and can demonstrate
27 15 that the foreclosed homeowner has a reasonable ability to pay
27 16 for the subsequent conveyance of an interest back to the
27 17 foreclosed homeowner. The bill creates a rebuttable
27 18 presumption that a homeowner is reasonably able to pay for the
27 19 subsequent conveyance if the owner's payments for primary
27 20 housing expenses and regular principal and interest payments
27 21 on other personal debt, on a monthly basis, do not exceed 60
27 22 percent of the owner's monthly gross income.

27 23 2. The foreclosure purchaser and the foreclosed homeowner
27 24 complete a closing for any foreclosure reconveyance in which
27 25 the foreclosure purchaser obtains a deed or mortgage from a
27 26 foreclosed homeowner.

27 27 3. The foreclosure purchaser obtains the written consent
27 28 of the foreclosed homeowner to a grant by the foreclosure
27 29 purchaser of any interest in the property during such times as
27 30 the foreclosed homeowner maintains any interest in the
27 31 property.

27 32 4. The foreclosure purchaser complies with federal
27 33 requirements for disclosure, loan terms, and conduct for any
27 34 foreclosure reconveyance in which the foreclosed homeowner

27 35 obtains a vendee interest in a contract for deed.

28 1 The bill further prohibits a foreclosure purchaser from
28 2 doing any of the following:

28 3 1. Entering into a foreclosure reconveyance unless the
28 4 foreclosure purchaser notifies all existing lien holders of
28 5 the foreclosure purchaser's intent to accept conveyance of any
28 6 interest in the property from the foreclosed homeowner, and
28 7 fully complies with all requirements.

28 8 2. Entering into repurchase or lease terms as part of the
28 9 subsequent conveyance that are unfair or commercially
28 10 unreasonable, or engage in any other unfair conduct.

28 11 3. Representing the foreclosure purchaser is acting as an
28 12 advisor or a consultant, or in any other manner represents
28 13 that the foreclosure purchaser is acting on behalf of the
28 14 homeowner; the foreclosure purchaser has a qualification,
28 15 certification, or licensure that the foreclosure purchaser
28 16 does not have or that the foreclosure purchaser is not a
28 17 member of a licensed profession if that is untrue; the
28 18 foreclosure purchaser is assisting the foreclosed homeowner to
28 19 "save the house" or a substantially similar phrase; or the
28 20 foreclosure purchaser is assisting the foreclosed homeowner in
28 21 preventing a completed foreclosure, forfeiture, or tax sale if
28 22 the result of the transaction is that the foreclosed homeowner
28 23 will not complete a redemption of the property.

28 24 4. Making any other statements or engage in any other
28 25 conduct that is false, deceptive, or misleading, or that has
28 26 the likelihood to cause confusion or misunderstanding,
28 27 including but not limited to statements regarding the value of
28 28 the residence in foreclosure, the amount of proceeds the
28 29 foreclosed homeowner will receive after a foreclosure sale,
28 30 any contract term, or the foreclosed homeowner's rights or
28 31 obligations incident to or arising out of the foreclosure
28 32 reconveyance.

28 33 5. Accepting from any foreclosed homeowner an execution
28 34 of, or inducing any foreclosed homeowner to execute any
28 35 instrument of conveyance of any interest in the residence in
29 1 foreclosure, recording with the county recorder or filing with
29 2 the registrar of titles any document including but not limited
29 3 to an instrument of conveyance, signed by the foreclosed
29 4 homeowner, or transferring or encumbering any interest in the
29 5 residence in foreclosure to any third party, until the time
29 6 during which the foreclosed homeowner may cancel the
29 7 transaction has fully elapsed.

29 8 The bill provides that all remedies under Iowa's consumer
29 9 fraud Act, Code section 714.16, are available for a foreclosed
29 10 homeowner under the bill and additionally provides that a
29 11 foreclosed homeowner also has a private right of action for
29 12 violations of the bill. If the court finds a violation, the
29 13 court shall award to the foreclosed homeowner actual damages,
29 14 appropriate equitable relief, and the costs of the action, and
29 15 shall award reasonable fees to the foreclosed homeowner's
29 16 attorney. Exemplary damages may also be awarded, but a
29 17 foreclosed homeowner's claim for such damages must be
29 18 commenced within four years after the date of the alleged
29 19 violation.

29 20 The bill provides that any foreclosure purchaser who
29 21 engages in any violation of the bill that would operate as a
29 22 fraud or deceit commits a serious misdemeanor. A serious
29 23 misdemeanor is punishable by confinement for no more than one
29 24 year and a fine of at least \$315 but not more than \$1,875.

29 25 The bill provides that any waiver of the provisions of
29 26 sections in the bill is void and unenforceable except a
29 27 consumer may waive the three-day right to cancel provided in
29 28 the bill if the property is subject to a foreclosure sale
29 29 within the three business days and the shortened cancellation
29 30 period was not caused by the foreclosure purchaser or any
29 31 agent of the foreclosure purchaser and the foreclosed
29 32 homeowner agrees to waive the foreclosed homeowner's right to
29 33 cancel in a handwritten statement signed by all parties
29 34 holding title to the foreclosed property.

29 35 The bill provides that any provision in a foreclosure
30 1 reconveyance contract which attempts or purports to require
30 2 arbitration of any dispute arising under the bill is void at
30 3 the option of the owner.

30 4 The bill provides an automatic stay provision that provides
30 5 that a court hearing an eviction action against a foreclosed
30 6 homeowner shall issue an automatic stay, without imposing
30 7 bond, if a foreclosed homeowner makes a prima facie showing
30 8 that the foreclosed homeowner has commenced an action
30 9 concerning a foreclosure reconveyance, asserts a defense that
30 10 the property that is the subject of the eviction action is

30 11 also the subject of a foreclosure reconveyance in violation of
30 12 the bill, or asserts a claim or affirmative defense of fraud,
30 13 false pretense, false promise, misrepresentation, misleading
30 14 statement, or deceptive practice, in connection with a
30 15 foreclosure reconveyance, owned the residence in foreclosure,
30 16 conveyed title to the residence in foreclosure to a third
30 17 party upon a promise that the defendant would be allowed to
30 18 occupy the residence in foreclosure or other real property in
30 19 which the foreclosure purchaser or a person acting in
30 20 participation with the foreclosure purchaser has an interest
30 21 and that the residence in foreclosure or other real property
30 22 would be the subject of a foreclosure reconveyance, and since
30 23 the conveyance, has continuously occupied the residence in
30 24 foreclosure or other real property in which the foreclosure
30 25 purchaser or a person acting in participation with the
30 26 foreclosure purchaser has an interest.
30 27 EFFECTIVE DATE. The bill takes effect upon enactment.
30 28 LSB 5682DP 82
30 29 rh/rj/24.2